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**UNITED STATES BANKRUPTCY COURT  
CENTRAL DISTRICT OF CALIFORNIA  
LOS ANGELES DIVISION**

In re:

CARTEL MANAGEMENT, INC.

Debtor.

Lead Case No. 2:17-bk-11179-DS

Jointly administered with:  
Case No. 2:17-bk-11181-DS  
(Titans of Mavericks, LLC)

Chapter 11

In re:

TITANS OF MAVERICKS, LLC,

Debtor.

**DEBTORS' MOTION FOR ENTRY OF AN ORDER: (1) APPROVING SALE OF SUBSTANTIALLY ALL OF THE DEBTORS' ASSETS RELATED TO "TITANS OF MAVERICKS" FREE AND CLEAR OF ALL LIENS, CLAIMS AND INTERESTS; (2) APPROVING DEBTORS' ASSUMPTION AND ASSIGNMENT OF UNEXPIRED LEASES AND EXECUTORY CONTRACTS AND DETERMINING CURE AMOUNTS; (3) APPROVING REJECTION OF UNEXPIRED LEASES AND EXECUTORY CONTRACTS WHICH ARE NOT ASSUMED; (4) WAIVING THE 14-DAY STAY PERIODS SET FORTH IN BANKRUPTCY RULES 6004(h) AND 6006(d); AND (5) GRANTING RELATED RELIEF; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF; DECLARATION OF GRIFFIN GUESS**

**Hearing Schedule:**

Date: June 7, 2017

Time: 2:00 p.m.

Place: Courtroom 1639  
255 East Temple Street  
Los Angeles, CA 90012

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1 Cartel Management, Inc. (“CMI”) and Titans of Mavericks, LLC (“Titans”, and  
2 collectively with CMI, the “Debtors”), Chapter 11 debtors and debtors in possession in the above-  
3 entitled, jointly-administered, Chapter 11 bankruptcy cases, hereby file this motion (the  
4 “Motion”) seeking the entry of an order of the Court (A) pursuant to 11 U.S.C. § 363(f) approving  
5 the sale free and clear of all liens, claims and interests to the winning bidder at an auction sale to  
6 be conducted by the Debtors on June 1, 2017 of substantially all of the Debtors’ assets related to  
7 “Titans of Mavericks” (excluding the Debtors’ cash, avoidance causes of action, litigation rights  
8 and certain other excluded assets); (B) pursuant to 11 U.S.C. § 365, (i) authorizing the Debtors to  
9 assume executory contracts and unexpired leases and assign them to the winning bidder, and (ii)  
10 establishing the cure amounts, if any, payable under such executory contracts and unexpired  
11 leases; (C) authorizing the Debtors to reject executory contracts and unexpired leases that are not  
12 assumed and assigned; (D) waiving the 14-day stay periods set forth in Bankruptcy Rules 6004(h)  
13 and 6006(d) to enable the sale to close as quickly as possible; and (E) granting certain other  
14 related relief. A more detailed analysis of the status of these cases and the bases for this Motion  
15 are set forth below in the annexed Memorandum of Points and Authorities and Declaration of  
16 Griffin Guess (the “Declaration”).

17 WHEREFORE, the Debtors respectfully request that this Court:

18 1. approve the sale of the Debtors’ business/assets related to “Titans of Mavericks” to  
19 the winning bidder and winning back-up bidder at the auction sale free and clear of all liens,  
20 claims and interests;

21 2. find that the winning bidder and winning back-up bidder at the auction sale are  
22 good faith buyers entitled to all of the protections afforded by Section 363(m) of the Bankruptcy  
23 Code;

24 3. approve (effective as of the date of the sale closing) the Debtors’ assumption and  
25 assignment to the winning bidder and winning back-up bidder at the auction sale the Designated  
26 Contracts (defined below);

27 4. find that the Cures (defined below) which must be paid in connection with the  
28 Debtors’ assumption and assignment of the Designated Contracts are the amounts set forth herein

1 and that adequate assurance of future performance has been demonstrated, and order that any  
2 party that fails to file a timely objection to this Motion shall be deemed to have consented to the  
3 amount of the Cures and be forever barred from challenging the Debtors' proposed amounts of  
4 the Cures;

5 5. approve (effective as of the date of the sale closing) the Debtors' rejection of all of  
6 the contracts and leases that the Debtors designate as Rejected Contracts (defined below), with the  
7 Debtors reserving the right to modify or supplement this list of Rejected Contracts as the Debtors  
8 deem appropriate;

9 6. enter a sale order in a form that is mutually agreed to between the Debtors and the  
10 winning bidder and winning back-up bidder at the auction sale;

11 7. waive the 14-day stay periods set forth in Bankruptcy Rules 6004(h) and 6006(d);  
12 and

13 8. grant such other and further relief as the Court deems just and proper.

14 Dated: May 17, 2017

CARTEL MANAGEMENT, INC.; TITANS OF  
MAVERICKS, LLC

16 By: /s/ Krikor J. Meshefejian

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19 Counsel for Chapter 11 Debtors and Debtors in  
Possession

**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. STATEMENT OF FACTS**

**A. Brief Description Of The Debtors' Business And Operations.**

CMI and Titans together promote, organize, and host one of the most famous sporting events in “big wave” surfing, known as “Titans of Mavericks” at the Pacific Ocean surf break popularly known as “Mavericks” located near Half Moon Bay, California, just south of San Francisco. This one-day, invitation only, surfing competition attracts professional big wave surfers from across the globe. The competition is limited to twenty four of the world’s best male surfers, and six of the world’s best female surfers, challenging the massive swells and each other on the biggest and best surf days every winter. It is not uncommon for competition waves to be in excess of fifty feet. The current competition date generally spans from November through March 31 each year. When weather and surf conditions are determined to be satisfactory, notice is provided to the contestants of the commencement of the event. The event does not necessarily occur every year – if weather and wave conditions are not deemed satisfactory, the event is not held.<sup>1</sup>

CMI and Titans work collectively to promote, organize, and host the event. CMI generally is in the business of event and brand management and media broadcast development to promote, produce, develop and market intellectual properties to develop stronger media presence and business models for the exploitation of such intellectual properties. CMI is wholly owned by Griffin Guess. Mr. Guess is also the President and sole member of the Board of Directors of CMI.

In 2015, Mr. Guess created Titans to hold the intellectual properties and handle the actual day to day tasks related to the organization of the Titans of Mavericks surf event. Mr. Guess is the sole manager and member of Titans. CMI and Titans therefore work hand in hand to promote, organize, and host the event. The Debtors have approximately six staffers. The Debtors have common ownership and business goals, with CMI providing the licensing and intellectual

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<sup>1</sup> Although the competition was not held prior to March 31, 2017, the event may still be held later this year.



1 property needed to conduct the event, and Titans actually managing and hosting the event. CMI  
2 has no secured debt and approximately \$1.232 million of general unsecured debt. Titans has no  
3 secured debt and approximately \$1.532 million of general unsecured debt. During the past  
4 eighteen months, the Debtors and their principal have spent in excess of \$3 million developing  
5 and marketing the Titans of Mavericks brand, paying operating expenses, and obtaining the  
6 intellectual property and permits in connection with the surf event.

7 **B. Events Leading To The Debtors' Bankruptcy Cases.**

8 The primary source of income for the Debtors is revenue generated from sponsorship and  
9 media agreements between CMI and third parties such as Red Bull, Clif Bar, Fox Sports and  
10 Pandora. The Debtors also generate revenue from the sale of products such as clothing, hats,  
11 posters, and stickers associated with the surfing event.

12 Despite revenue growth and significant increased attention for the event, the Debtors faced  
13 operating difficulties arising from delayed sponsor payments, political complications, costly  
14 litigation and the need to maintain their necessary permits in the face of continuing efforts by  
15 certain third parties to negatively affect the Debtors. The Debtors were forced to file for  
16 bankruptcy protection in order to obtain a breathing spell and hope to conduct either a sale of their  
17 business and/or assets, or internally restructure their financial affairs with an infusion of new  
18 equity. The Debtors have determined that an auction of their assets will motivate interested  
19 buyers to bid aggressively to allow the Debtors to obtain the highest and best value for such  
20 assets.

21 **C. The Debtors' Efforts To Market And Sell The Debtors' Assets.**

22 Since February 10, 2017, the Debtors' principal has contacted marquee parties in the  
23 following five sectors: television network groups, media and internet companies, brand and  
24 product corporations, high net-worth individuals, and professional sports leagues and teams. In  
25 total, the Debtors have reached out to hundreds of parties and have had direct communications  
26 with approximately seventy parties. The Debtors created a substantive data room from which  
27 prospectively interested buyers can obtain extensive financial data and other information about  
28 the Debtors' assets. The Debtors have also assembled a substantial list of approximately 71

prospective buyers, and to date, approximately 11 buyers have signed confidentiality agreements and been provided with access to the data room. The opportunity to acquire the Debtors' assets was widely broadcast, and the Debtors therefore believe that they have reasonably provided notice to the most likely candidates who may be interested in acquiring the Debtors' assets by way of the auction sale process.

On May 3, 2017, the Debtors filed that certain *Debtors' Motion For Entry Of An Order: (1) Approving Auction Sale Format And Bidding Procedures; (2) Approving Form Of Notice To Be Provided To Prospective Buyers; (3) Approving Form Of Asset Purchase Agreement For Prospective Overbidders To Use; And (4) Scheduling A Hearing For The Court To Consider Approval Of The Debtors' Asset Sale To The Highest And Best Bidder* (the "Bid Procedures Motion"). On May 11, 2017, the Bankruptcy Court entered an order (the "Bid Procedures Order") [Doc No 86] granting the Bid Procedures Motion.

Pursuant to the Bid Procedures Order, an auction will be conducted on June 1, 2017. As soon as possible after the auction, assuming a winning bidder emerges, the Debtors will file a supplement to this Motion setting for the identity of the winning bidder and the terms and conditions of the proposed sale to the winning bidder.

## II.

### DISCUSSION

#### **A. The Court Should Authorize the Debtors to Sell their Assets to the Highest Bidder(s) at the Auction Sale.**

Section 363(b) of the Bankruptcy Code provides that a debtor "after notice and a hearing, may use, sell or lease, other than in the ordinary course of business, property of the estate." To approve a use, sale or lease of property other than in the ordinary course of business, the court must find "some articulated business justification." *See, e.g., In re Martin (Myers v. Martin)*, 91 F.3d 389, 395 (3d Cir. 1996) citing *In re Schipper (Fulton State Bank v. Schipper)*, 933 F.2d 513, 515 (7th Cir. 1991); *Comm. of Equity SEC Holders v. Lionel Corp. (In re Lionel Corp.)*, 722 F.2d 1063, 1070 (2d Cir. 1983); *In re Abbotts Dairies of Pennsylvania, Inc.*, 788 F.2d 143 (3d Cir. 1986) (implicitly adopting the "sound business judgment" test of *Lionel Corp.* and requiring good

1 faith); *In re Delaware and Hudson Ry. Co.*, 124 B.R. 169 (D. Del. 1991) (concluding that the  
2 Third Circuit adopted the “sound business judgment” test in the *Abbotts Dairies* decision).

3 In the Ninth Circuit, “cause” exists for authorizing a sale of estate assets if it is in the best  
4 interest of the estate, and a business justification exists for authorizing the sale. *In re Huntington,*  
5 *Ltd.*, 654 F.2d 578 (9th Cir. 1981); *In re Walter*, 83 B.R. 14, 19-20 (9th Cir. B.A.P. 1988). The  
6 Ninth Circuit has also held that section 363 allows the sale of substantially all assets of a debtor's  
7 bankruptcy estate after notice and a hearing. *In re Qintex Entertainment, Inc.*, 950 F.2d 1492 (9th  
8 Cir. 1991).

9 In determining whether a sale satisfies the business judgment standard, courts have held  
10 that: (1) there be a sound business reason for the sale; (2) accurate and reasonable notice of the  
11 sale be given to interested persons; (3) the sale yield an adequate price (i.e., one that is fair and  
12 reasonable); and (4) the parties to the sale have acted in good faith. *Titusville Country Club v.*  
13 *Pennbank (In re Titusville Country Club)*, 128 B.R. 396, 399 (Bankr. W.D. Pa. 1991); *see also, In*  
14 *re Walter*, 83 B.R. at 19-20.

15 The Debtors submit that their proposed sale of their business/assets to the highest  
16 bidder(s) at the auction sale clearly comports with each of these four criteria and demonstrates  
17 that the Debtors’ business judgment to proceed with the sale is sound.

18 1. Sound Business Purpose.

19 There must be some articulated business justification, other than appeasement of major  
20 creditors, for using, selling or leasing property out of the ordinary course of business before the  
21 bankruptcy court may order such disposition under Section 363(b). *In re Lionel Corp.*, 722 F.2d  
22 at 1070. The Ninth Circuit Bankruptcy Appellate Panel in *Walter v. Sunwest Bank (In re Walter)*,  
23 83 B.R. 14, 19 (9th Cir. B.A.P. 1988) has adopted a flexible case-by-case test to determine  
24 whether the business purpose for a proposed sale justifies disposition of property of the estate  
25 under Section 363(b). In *Walter*, the Bankruptcy Appellate Panel, adopting the reasoning of the  
26 Fifth Circuit in *In re Continental Airlines, Inc.*, 780 F.2d 1223 (5th Cir. 1986) and the Second  
27 Circuit in *In re Lionel Corp.*, *supra*, articulated the standard to be applied under Section 363(b) as  
28 follows:

Whether the proffered business justification is sufficient depends on the case. As the Second Circuit held in Lionel, the bankruptcy judge should consider all salient factors pertaining to the proceeding and, accordingly, act to further the diverse interests of the Debtor, creditors and equity holders, alike. He might, for example, look to such relevant facts as the proportionate value of the asset to the estate as a whole, the amount of elapsed time since the filing, the likelihood that a plan of reorganization will be proposed and confirmed in the near future, the effect of the proposed disposition on future plans of reorganization, the proceeds to be obtained from the disposition vis-a-vis any appraisals of the property, which of the alternatives of use, sale or lease the proposal envisions and, most importantly perhaps, whether the asset is increasing or decreasing in value. This list is not intended to be exclusive, but merely to provide guidance to the bankruptcy judge.

*In Re Walter*, 83 B.R. at 19-20, citing *In re Continental Air Lines, Inc.*, 780 F.2d 1223, 1226 (5th Cir. 1986).

The facts pertaining to the Debtors' proposed sale of their business/assets to the highest bidder(s) at the auction sale clearly substantiate the Debtors' business decision that such contemplated sale serves the best interests of the Debtors' estates and their creditors and merits the approval of the Court.

As indicated above, the Debtors have actively marketed their business and assets related to "Titans of Mavericks" for months, have reached out to key players in the action sports and entertainment industry, and have determined that the most likely manner of paying creditors in these cases is by monetizing the Debtors' assets for as high a price as possible. Absent a significant, timely monetizing event, recoveries to creditors and the timing of such recoveries are not certain in these cases. Thus, the Debtors submit that there is a sound business purpose for the Debtors to consummate a going concern sale of their business/assets to the highest bidder(s) at the auction sale. The Debtors therefore submit that their proposed sale is justified by sound business purposes, satisfying the first requirement for a sale under Section 363(b) of the Bankruptcy Code.

## 2. Accurate and Reasonable Notice.

In connection with a proposed sale under Section 363 of the Bankruptcy Code, "four pieces of information must be presented to the creditors. The notice should: place all parties on notice that the debtor is selling its business; disclose accurately the full terms of the sale; explain the effect of the sale as terminating the debtor's ability to continue in business; and explain why

1 the proposed price is reasonable and why the sale is in the best interest of the estate.” *In re*  
2 *Delaware & Hudson Railway Co.*, 124 B.R. 169, 180 (D. Del. 1991). A notice is sufficient if it  
3 includes the terms and conditions of the sale and if it states the time for filing objections. *In re*  
4 *Karpe*, 84 B.R. 926, 930 (Bankr. M.D. Pa. 1988). The purpose of the notice is to provide an  
5 opportunity for objections and hearing before the court if there are objections. *Id.*

6 Following the Court’s approval of the Bid Procedures Motion, the Debtors provided notice  
7 of the opportunity to participate in the auction sale to all of the known prospective bidders. The  
8 Debtors are also providing notice of this Motion on all of the Debtors’ creditors, the UST, those  
9 parties who have requested special notice and all other parties to executory contracts and  
10 unexpired leases.

11 The Debtors submit that the foregoing satisfies the requirements of Bankruptcy Rules  
12 6004(a) and (c), which provide as follows:

13 “(a) ... Notice of a proposed ... sale ... of property ... not in the ordinary course of  
14 business shall be given pursuant to Rule 2002(a)(2),(c)(1),(i) and (k) ...  
15 (c) ... A motion for authority to sell property free and clear of liens or other  
16 interests shall be made in accordance with Rule 9014 and shall be served on the  
17 parties who have liens or other interests in the property to be sold. The notice  
18 required by subdivision (a) of this rule shall include the date of the hearing on the  
19 motion and the time within which objections may be filed and served on the debtor  
20 in possession...”

21 Fed. R. Bankr. P. 6004(a)(c). The Debtors have complied with all noticing procedures required  
22 by the Bankruptcy Rules and the Court.

23 3. Fair and Reasonable Price.

24 In order to be approved under Section 363(b) of the Bankruptcy Code, the purchase price  
25 must be fair and reasonable. *Coastal Indus., Inc. v. U.S. Internal Revenue Service (In re Coastal*  
26 *Indus., Inc.)*, 63 B.R. 361, 368 (Bankr. N.D. Ohio 1986). Several courts have held that “fair  
27 value” is given for property in a bankruptcy sale when at least 75% of the appraised value of such  
28 property is paid. *See In re Karpe*, 84 B.R. at 933; *In re Abbotts Dairies of Pennsylvania, Inc.*, 788  
F.2d 143, 149 (3d Cir. 1986); *Willemain v. Kivitz*, 764 F.2d 1019 (4th Cir. 1985); *In re Snyder*, 74  
B.R. 872, 878 (Bankr. E.D. Pa. 1987); *In re The Seychelles, Partnership and Genius Corp. v.*

1 *Banyan Corp.*, 32 B.R. 708 (N.D. Tex. 1983). However, the Debtor also realizes that “its main  
2 responsibility, and the primary concern of the bankruptcy court, is the maximization of the value  
3 of the asset sold.” *In re Integrated Resources, Inc.*, 135 B.R. 746, 750 (Bankr. S.D.N.Y. 1992),  
4 *aff’d*, 147 B.R. 650 (S.D.N.Y. 1992). “It is a well-established principle of bankruptcy law that the  
5 objective of bankruptcy rules and the [debtor’s] duty with respect to such sales is to obtain the  
6 highest price or greatest overall benefit possible for the estate.” *In re Atlanta Packaging*  
7 *Products, Inc.*, 99 B.R. 124, 131 (Bankr. N.D. Ga. 1988); *see also In re Wilde Horse Enterprises*,  
8 136 B.R. 830, 841 (Bankr. C.D. Cal. 1991) [“in any sale of estate assets, the ultimate purpose is to  
9 obtain the highest price for the property sold”].

10 The sale process undertaken by the Debtors was specifically designed to insure that the  
11 highest price possible is obtained for the Debtors’ business/assets. The Debtors engaged in an  
12 extensive and broad marketing and sale process for months, having facilitated due diligence with  
13 numerous parties. All interested and viable buyers were provided with equal access to the  
14 Debtors and their financial information. All prospective bidders have the equal opportunity to  
15 participate in the auction sale which is designed to achieve the highest and best price for the  
16 Debtors’ business/assets, with no bidder having any advantage over any other. The Debtors  
17 therefore submit that the highest and best price obtained for the Debtors’ business/assets at the  
18 auction sale represents the current fair market value of the Debtors’ business/assets.

19 4. Good Faith.

20 When a bankruptcy court authorizes a sale of assets pursuant to Section 363(b)(1), it is  
21 required to make a finding with respect to the “good faith” of Purchaser. *In re Abbotts Dairies*,  
22 788 F.2d at 149. Such a procedure ensures that Section 363(b)(1) will not be employed to  
23 circumvent the creditor protections of Chapter 11, and as such, it mirrors the requirement of  
24 Section 1129, that the Bankruptcy Court independently scrutinizes the debtor’s reorganization  
25 plan and makes a finding that it has been proposed in good faith. *Id.* at 150.

26 “Good faith” encompasses fair value, and further speaks to the integrity of the transaction.  
27 *In re Wilde Horse Enterprises*, 136 B.R. at 842. With respect to the debtor’s conduct in  
28 conjunction with the sale, the good faith requirement “focuses principally on the element of

special treatment of the Debtor's insiders in the sale transaction.” See *In re Industrial Valley Refrig. and Air Cond. Supplies, Inc.*, 77 B.R. 15, 17 (Bankr. E.D. Pa. 1987). With respect to the buyer’s conduct, this Court should consider whether there is any evidence of “fraud, collusion between the purchaser and other bidders or the [debtor], or an attempt to take grossly unfair advantage of other bidders.” *In re Abbotts Dairies*, 788 F.2d at 147, *In re Rock Indus. Mach. Corp.*, 572 F.2d 1195, 1198 (7th Cir. 1978); *In re Wilde Horse Enterprises, Inc.*, 136 B.R. at 842; *In re Alpha Industries, Inc.*, 84 B.R. 703, 706 (Bankr. D. Mont. 1988). In short, “[l]ack of good faith is generally determined by fraudulent conduct during the sale proceedings.” *In re Apex Oil Co.*, 92 B.R. 847, 869 (Bankr. E.D. Mo. 1988), citing *In re Exennium, Inc.*, 715 F.2d 1401, 1404-05 (9th Cir. 1983).

In *In re Filtercorp, Inc.*, 163 F.3d 570 (9th Cir. 1998), the Ninth Circuit set forth the following test for determining whether a buyer is a good faith purchaser:

A good faith buyer “is one who buys ‘in good faith’ and ‘for value.’” [citations omitted.] [L]ack of good faith is [typically] shown by ‘fraud, collusion between the purchaser and other bidders or the trustee, or an attempt to take grossly unfair advantage of other bidders.’” [citations omitted.]

*Filtercorp*, 163 F.3d at 577.

The Debtor’s marketing and sale efforts have been structured in a manner to avoid any fraud, collusion or unfair advantages. No special treatment was provided to any bidder. The Debtors will be providing all qualified bidders with a draft of the template asset purchase agreement that the Debtors have prepared. Bidders are required to provide the Debtors with any proposed changes they have to the template asset purchase agreement prior to the auction sale. The Debtors expect to negotiate with the winning bidder(s) at or prior to the auction sale modifications to the asset purchase agreement in arm’s length, good faith negotiations. Based on the foregoing, the Debtors submit that the Court should find that the winning bidder(s) at the auction sale are entitled to all of the protections afforded by Section 363(m) of the Bankruptcy Code.

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**B. Section 363(f) of the Bankruptcy Code Permits the Sale of the Debtors' Assets to Be Free and Clear of Any and All Liens, Claims and Interests.**

Section 363(f) of the Bankruptcy Code provides, in relevant part, as follows:

The trustee may sell property under subsection (b) . . . of this section free and clear of any interest in such property of an entity other than the estate, only if—

- (1) applicable non-bankruptcy law permits the sale of such property free and clear of such interest; ...
- (2) such entity consents;
- (3) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;
- (4) Such interest is in bona fide dispute; or
- (5) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

11 U.S.C. § 363(f).

Section 363(f) of the Bankruptcy Code was drafted in the disjunctive. Thus, a debtor need only meet the provisions of one of the five subsections of Section 363(f) in order for a sale of property to be free and clear of liens, claims and interests.

**1. 363(f)(1)**

The Debtors' assets may be sold free of unsecured claims under applicable law. Claims which assert rights to payment on an unsecured basis (whether or not disputed) are simply claims against the Debtors and do not legally attach to the Debtors' assets after sale. Given that such claims are claims for monetary relief which do not attach to the Debtors' assets, the Debtors' assets may therefore be sold free and clear of such claims. Moreover, there are no secured claims either scheduled by the Debtors or filed against the Debtors. That is, all of the claims asserted against the Debtors are unsecured claims.

**2. 363(f)(2)**

In the event none of the Debtors' creditors file a timely objection to the Debtors' proposed sale, the Debtors submit that the "consent" of an entity asserting an interest in the property sought



1 to be sold, as referenced in Section 363(f)(2) of the Bankruptcy Code, can be implied if such  
2 entity fails to make a timely objection to the sale after receiving notice of the sale. *In re Eliot*, 94  
3 B.R. 343, 345 (E.D. Pa. 1988). In its ruling, the *Eliot* court relied on *In re Gabel*, 61 B.R. 661  
4 (Bankr. W.D. La. 1985), which held that implied consent is sufficient to authorize a sale under §  
5 363(f)(2). *See also, In re Ex-Cel Concrete Company, Inc.*, 178 B.R. 198, 203 (9th Cir. BAP  
6 1995) [“The issue here is whether there was consent or non-opposition by Citicorp.”]; *In re*  
7 *Paddlewheels, Inc.*, 2007 WL 1035151 (Bankr. E.D.La. April 2, 2007) [“The Sale Motion  
8 complies with section 363(f) of the Bankruptcy Code, in that the Trustee either obtained the  
9 consent of Whitney to the sale of the Vessel to Purchaser or Whitney had no objection to the  
10 Sale.”].

11 As a result of the foregoing, the Debtors submits that the Court should approve the sale of  
12 the Debtors’ business/assets to the highest bidder(s) at the auction sale free and clear of all liens  
13 (the Debtors are not aware of any liens against the Debtors’ assets), claims and interests of those  
14 parties who do not file a timely objection to the sale, by deeming all such parties to have  
15 consented to the proposed sale pursuant to Section 363(f)(2) of the Bankruptcy Code.

16 3. 363(f)(3)

17 The Debtors do not believe that this subsection applies, because the Debtors do not believe  
18 that there are any liens against any of the Debtors’ assets. Attached hereto as Exhibit 1 and  
19 Exhibit 2, are lien searches conducted for CMI and Titans, respectively. The lien search reports  
20 indicate that there are no records of liens against the Debtors or the Debtors’ assets.

21 4. 363(f)(4)

22 If any party claims an alleged lien against or interest in the Debtors’ assets related to  
23 “Titans of Mavericks”, such liens and alleged interests are would be disputed by the Debtors and  
24 would be in bona fide dispute.

25 5. 363(f)(5)

26 Section 363(f)(5) of the Bankruptcy Code permits a sale of property free and clear of liens  
27 and interests if “such entity could be compelled, in a legal or equitable proceeding, to accept a  
28 money satisfaction of such interest.” 11 U.S.C. § 363(f)(5).

1 The Bankruptcy Appellate Panel for the Ninth Circuit has scrutinized § 363(f)(5) in the  
2 context of the sale of real property. See *Clear Channel Outdoor, Inc. v. Knupfer (In re PW,*  
3 *LLC)*, 391 B.R. 25 (9<sup>th</sup> Cir. B.A.P. 2008) (“*Clear Channel*”). In *Clear Channel*, the senior  
4 secured creditor attempted to purchase the debtor’s real property by way of a credit bid, free and  
5 clear of the interest of a nonconsenting junior lienholder outside of a plan of reorganization. The  
6 Bankruptcy Court approved the sale to the senior lender under § 363(f)(5), finding that §  
7 363(f)(5) permits a sale free and clear of the creditor’s interest in property “whenever a claim can  
8 be paid with money.” 391 B.R. at 42.

9 In reversing the Bankruptcy Court’s decision, the Bankruptcy Appellate Panel found that  
10 § 363(f)(5) requires that “(1) a proceeding exists or could be brought, in which (2) the nondebtor  
11 could be compelled to accept a money satisfaction of (3) its interest.” *Id.* at 41. Taking up these  
12 factors in reverse order, the Bankruptcy Appellate Panel concluded that a lien, such as the lien of  
13 a secured lender, constitutes an “interest” for purposes of § 363(f)(5). With respect to the second  
14 factor, the Bankruptcy Appellate Panel ruled that § 363(f)(5) refers to those proceedings in  
15 which the creditor “could be compelled to take less than the value of the claim secured by the  
16 interest.” *Id.* In order to approve a sale free and clear under § 363(f)(5), the Court must “make a  
17 finding of the existence of ... a mechanism [to address extinguishing the lien or interest without  
18 paying such interest in full] and the [debtor in possession] must demonstrate how satisfaction of  
19 the lien ‘could be compelled.’” *Id.* at 45. Finally, the Bankruptcy Appellate Panel held that §  
20 363(f)(5) requires that there be, “or that there be the possibility of, some proceeding, either at  
21 law or at equity, in which the nondebtor could be forced to accept money in satisfaction of its  
22 interest.” *Id.*

23 Here, all of the factors set forth in *Clear Channel* for a sale free and clear of claimants’  
24 interests are satisfied. Specifically, any party who asserts an “interest” in the Debtors’ assets  
25 related to “Titans of Mavericks” could be compelled, in a legal or equitable proceeding, to accept  
26 a money satisfaction of its interest. Similarly, any unsecured creditor of the Debtor’s estate  
27 could undeniably be forced to accept, via court proceedings whereby such creditors could obtain  
28 money judgments against the Debtor, money satisfaction of their claims.

C. **The Court Should Authorize the Debtors to Assume and Assign to the Winning Bidder at the Auction Sale All Executory Contracts and Unexpired Leases that the Winning Bidder Wishes to Assume.**

Barring exceptions not herein relevant, Sections 365(a) and 1107(a) authorizes a debtor in possession, “subject to the Court’s approval, ... [to] assume or reject any executory contract or unexpired lease of the debtor.” A debtor in possession may assume or reject executory contracts for the benefit of the estate. *In re Klein Sleep Products, Inc.*, 78 F.3d 18, 25 (2d. Cir. 1996); *In re Central Fla. Metal Fabrication, Inc.*, 190 B.R. 119, 124 (Bankr. N.D. Fla. 1995); *In re Gucci*, 193 B.R. 411, 415 (S.D.N.Y. 1996). In reviewing a debtor in possession’s decision to assume or reject an executory contract, a bankruptcy court should apply the “business judgment test” to determine whether it would be beneficial to the estate to assume it. *In re Continental Country Club, Inc.*, 114 B.R. 763, 767 (Bankr. M.D. Fla. 1990); *see also In re Gucci*, 193 B.R. at 415. The business judgment standard requires that the court follow the business judgment of the debtor unless that judgment is the product of bad faith, whim, or caprice. *In re Prime Motors Inns*, 124 B.R. 378, 381 (Bankr. S.D. Fla. 1991), *citing Lubrizol Enterprises v. Richmond Metal Finishers*, 756 F.2d 1043, 1047 (4th Cir. 1985), *cert. denied*, 475 U.S. 1057 (1986).

In this case, the San Mateo County Harbor District (the “Harbor District”) has claimed that the Debtors’ five-year permit for use of public land at and near Pillar Point Harbor from November 1, 2016 through March 31, 2021 (the “Permit”), is not assignable without the Harbor District’s and the public’s consent. First, the Debtors do not concede that the Permit, or any of the Debtors’ other permits or contracts, are executory contracts that are capable of assumption or rejection. The Debtors’ interest in the Permit (and the Debtors’ other permits and contracts) is, however, property of the bankruptcy estate under Section 541 of the Bankruptcy Code. *See* 11 U.S.C. § 541(c)(1)(A) (“Except as provided in paragraph (2) of this subsection, an interest of the debtor in property becomes property of the estate under subsection (a)(1), (a)(2), or (a)(5) of this section notwithstanding any provision in an agreement, transfer agreement, or applicable nonbankruptcy law – (A) that restricts or conditions transfer of such interest by the debtor[.]”).

Second, to the extent necessary and applicable, the Debtors will comply with the

1 provisions of Section 365 of the Bankruptcy Code in connection with the transfer of the Permit or  
2 any other permit or contract to a new buyer, and, Section 365 of the Bankruptcy Code further  
3 authorizes the Debtors to assign the Permit to a third party without the Harbor District's consent.

4 Section 365(f)(1) of the Bankruptcy Code provides that "[e]xcept as provided in  
5 subsections (b) and (c) of this section, notwithstanding a provision in an executory contract or  
6 unexpired lease of the debtor, or in applicable law, that prohibits, restricts, or conditions the  
7 assignment of such contract or lease, the [debtor in possession] may assign such contract or lease  
8 under paragraph (2) of this subsection." Thus, the Permit, and all of the Debtors' other executory  
9 contracts and unexpired leases, may be assigned by the Debtors absent the consent of  
10 counterparties, provided that the requirements of Section 365(f)(2) of the Bankruptcy Code are  
11 met.

12 Pursuant to Section 365(f)(2) of the Bankruptcy Code, a debtor may assign its executory  
13 contracts and unexpired leases, provided the debtor first assumes such executory contracts and  
14 unexpired leases in accordance with Section 365(b)(1), and provides adequate assurance of future  
15 performance by the assignee. Pursuant to Section 365(b)(1), assumption of executory contracts  
16 and unexpired leases requires a debtor to: (a) cure any existing defaults under such agreements;  
17 (b) compensate all non-debtor parties to such agreements for any actual pecuniary loss resulting  
18 from the defaults; and (c) provide adequate assurance of future performance under the contract or  
19 lease. 11 U.S.C. § 365(b)(1); *see also In re Bowman*, 194 B.R. 227, 230 (Bankr. D. Ariz. 1995),  
20 *In re AEG Acquisition Corp.*, 127 B.R. 34, 44 (Bankr. C.D. Cal. 1991), *aff'd* 161 B.R. 50 (9th Cir.  
21 B.A.P. 1993).

22 The assumption and assignment of executory contracts furthers the goals of Chapter 11 of  
23 promoting reorganization by balancing the debtor's interest in maximizing the value of its estate  
24 against the contracting party's interest in receiving the benefit of its bargain and being protected  
25 against default by the debtor after assumption has occurred. *In re Embers 86th Street, Inc.*, 184  
26 B.R. 892, 896 (Bankr. S.D.N.Y. 1995).

27 Attached as Exhibit 3 to the annexed Declaration is a list of what the Debtors believe  
28 constitutes all of their unexpired leases and contracts (without conceding that the contracts are

1 executory contracts) (collectively, the “Contracts”) along with what cure amounts (the “Cures”),  
2 if any, the Debtors believe will be required to be paid in order for the Contracts to be assumed by  
3 the Debtors and assigned to the winning bidder(s) (assuming that the Contracts are executory  
4 contracts capable of assumption or rejection). Pursuant to this Motion, the other parties to the  
5 Contracts (“Counterparty” in the singular and “Counterparties” in the plural) shall have up until  
6 May 24, 2017 to file a pleading with the Court opposing the assumption and assignment of the  
7 Contracts and indicating that they dispute the Debtors’ designation of the amount of the Cures. If  
8 the Debtors and the Counterparties are not able to resolve their disagreement, the Court shall  
9 determine the amount of the Cures. If the Counterparties do not file a timely pleading disputing  
10 the Debtors’ designation of the amount of the Cures, the amount of the Cures designated by the  
11 Debtors shall be deemed to constitute the amount of the Cures which must be paid in order for the  
12 Debtors to assume the Contracts and assign the Contracts to the winning bidder or the winning  
13 backup bidder. All prospective bidders will be required to designate which Contracts they desire  
14 to assume (the “Designated Contracts”). The winning bidder and the winning back-up bidder will  
15 be required to pay the full amount of all Cures related to the Designated Contracts, in cash,  
16 without reduction of or setoff against the purchase price to be paid by such winning or back-up  
17 bidder, at the time of the sale closing as a condition to their ability to consummate their purchase  
18 of the purchased assets unless the Counterparties agree otherwise.

19 **In connection with this Motion, the Debtors are requesting an order of the Court**  
20 **providing that the Cures are the cure amounts which the winning bidder and winning back-**  
21 **up bidder must pay to the Counterparties in order for the Debtors to be able to assume and**  
22 **assign (to the extent Section 365 is applicable) to the winning bidder and winning back-up**  
23 **bidder the Designated Contracts at the closing to enable the Debtors to satisfy the cure**  
24 **requirements of Section 365(b)(1)(A) of the Bankruptcy Code (if applicable). In connection**  
25 **with the Debtors’ assumption and assignment of the Designated Contracts to the winning**  
26 **bidder and winning back-up bidder, the winning bidder and winning back-up bidder shall**  
27 **be deemed to have assumed any on-going liabilities and obligations in connection with all**  
28 **Designated Contracts.**

1       **The winning bidder and winning back-up bidder shall be required to provide such**  
2 **information as is reasonably required by the Court to enable the winning bidder and**  
3 **winning back-up bidder to satisfy any applicable “adequate assurance of future**  
4 **performance” requirements of 11 U.S.C. § 365(b)(1)(C) with respect to all Designated**  
5 **Contracts.**

6 **D.     The Court Should Authorize the Debtors to Reject All Executory Contracts and**  
7 **Unexpired Leases that the Winning Bidder does not Assume and that the Debtor**  
8 **Designates as a Rejected Contract.**

9       In connection with this Motion, the Debtors are requesting an order of the Court providing  
10 that all of the Contracts which are not Designated Contracts and which are identified by the  
11 Debtors after the sale auction as Contracts to be rejected (the “Rejected Contracts”) will be  
12 deemed rejected as of the closing of the Debtors’ sale, with the Debtors reserving the right to  
13 supplement the list of Rejected Contracts as the Debtors obtain additional information from the  
14 winning bidder and winning back-up bidder.

15 **E.     The Debtors Request the Court to Waive the Fourteen-Day Waiting Periods Set**  
16 **Forth in Bankruptcy Rules 6004(h) and 6006(d).**

17       Bankruptcy Rule 6004(h) provides, among other things, that an order authorizing the use,  
18 sale or lease of property . . . is stayed until the expiration of fourteen days after entry of the Court  
19 order, unless the Court orders otherwise. Bankruptcy Rule 6006(d) has a similar provision with  
20 respect to an order approving of a debtor's assumption and assignment of unexpired leases and  
21 executory contracts.

22       For all of the reasons set forth above, to make sure that the sale closing(s) occur timely  
23 and in order to ensure that the Debtors are able to preserve as much cash as possible, the Debtors  
24 believe that it is critically important that the Debtors and the winning bidder and winning back-up  
25 bidder be permitted to consummate their respective sale closing as soon after entry of the sale  
26 order as possible. In order to facilitate the most expeditious sale closing possible, the Debtors  
27 request that any order approving the Debtors’ sale of their business/assets and the Debtors’  
28 assumption and assignment of the Designated Contracts be effective immediately upon entry by

1 providing that the fourteen-day waiting periods of Bankruptcy Rule 6004(h) and 6006(d) are  
2 waived.

3 **III.**

4 **CONCLUSION**

5 Based upon all of the foregoing, the Debtors respectfully request that this Court:

6 1. approve the sale of the Debtors' business/assets to the winning bidder and winning  
7 back-up bidder at the auction sale free and clear of all liens, claims and interests;

8 2. find that the winning bidder and winning back-up bidder at the auction sale are  
9 good faith buyers entitled to all of the protections afforded by Section 363(m) of the Bankruptcy  
10 Code;

11 3. approve (effective as of the date of the sale closing) the Debtors' assumption and  
12 assignment to the winning bidder and winning back-up bidder at the auction sale the Designated  
13 Contracts (defined below);

14 4. find that the Cures (defined below) which must be paid in connection with the  
15 Debtors' assumption and assignment of the Designated Contracts are the amounts set forth herein  
16 and that adequate assurance of future performance has been demonstrated, and order that any  
17 party that fails to file a timely objection to this Motion shall be deemed to have consented to the  
18 amount of the Cures and be forever barred from challenging the Debtors' proposed amounts of  
19 the Cures;

20 5. approve (effective as of the date of the sale closing) the Debtors' rejection of all of  
21 the contracts and leases that the Debtors designate as Rejected Contracts (defined below), with the  
22 Debtors reserving the right to modify or supplement this list of Rejected Contracts as the Debtors  
23 deem appropriate;

24 6. enter a sale order in a form that is mutually agreed to between the Debtors and the  
25 winning bidder and winning back-up bidder at the auction sale;

26 7. waive the 14-day stay periods set forth in Bankruptcy Rules 6004(h) and 6006(d);  
27 and

28 8. grant such other and further relief as the Court deems just and proper.

1  
2 Dated: May 17, 2017

CARTEL MANAGEMENT, INC.; TITANS OF  
MAVERICKS, LLC

3 By: /s/ Krikor J. Meshefejian

4 DAVID L. NEALE

KRIKOR J. MESHEFEJIAN

5 LEVENE, NEALE, BENDER, YOO & BRILL L.L.P.  
6 Counsel for Chapter 11 Debtors and Debtors in  
Possession  
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**DECLARATION OF GRIFFIN GUESS**

I, Griffin Guess, hereby declare as follows:

1. I have personal knowledge of the facts set forth below and, if called to testify, would and could competently testify thereto.

2. I am the President, sole member of the Board of Directors, and authorized representative of Cartel Management, Inc. ("CMI"), and I am the sole member and managing member of Titans of Mavericks, LLC ("Titans" and collectively with CMI, the "Debtors").

**A. Brief Description Of The Debtors' Business And Operations.**

3. CMI and Titans together promote, organize, and host one of the most famous sporting events in "big wave" surfing, known as "Titans of Mavericks" at the Pacific Ocean surf break popularly known as "Mavericks" located near Half Moon Bay, California, just south of San Francisco. This one-day, invitation only, surfing competition attracts professional big wave surfers from across the globe. The competition is limited to twenty four of the world's best male surfers, and six of the world's best female surfers, challenging the massive swells and each other on the biggest and best surf days every winter. It is not uncommon for competition waves to be in excess of fifty feet. The current competition date generally spans from November through March 31 each year. When weather and surf conditions are determined to be satisfactory, notice is provided to the contestants of the commencement of the event. The event does not necessarily occur every year – if weather and wave conditions are not deemed satisfactory, the event is not held.<sup>2</sup>

4. CMI and Titans work collectively to promote, organize, and host the event. CMI generally is in the business of event and brand management and media broadcast development to promote, produce, develop and market intellectual properties to develop stronger media presence and business models for the exploitation of such intellectual properties. CMI is wholly owned by me.

5. In 2015, I created Titans to hold the intellectual properties and handle the actual

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<sup>2</sup> Although the competition was not held prior to March 31, 2017, the event may still be held later this year.

1 day to day tasks related to the organization of the Titans of Mavericks surf event. I am the sole  
2 manager and member of Titans. CMI and Titans therefore work hand in hand to promote,  
3 organize, and host the event. The Debtors have approximately six staffers. The Debtors have  
4 common ownership and business goals, with CMI providing the licensing and intellectual  
5 property needed to conduct the event, and Titans actually managing and hosting the event. CMI  
6 has no secured debt and approximately \$1.232 million of general unsecured debt. Titans has no  
7 secured debt and approximately \$1.532 million of general unsecured debt. During the past  
8 eighteen months, the Debtors and I have spent in excess of \$3 million developing and marketing  
9 the Titans of Mavericks brand, paying operating expenses, and obtaining the intellectual property  
10 and permits in connection with the surf event.

11 **B. Events Leading To The Debtors' Bankruptcy Cases.**

12 6. The primary source of income for the Debtors is revenue generated from  
13 sponsorship and media agreements between CMI and third parties such as Red Bull, Clif Bar, Fox  
14 Sports and Pandora. The Debtors also generate revenue from the sale of products such as  
15 clothing, hats, posters, and stickers associated with the surfing event.

16 7. Despite revenue growth and significant increased attention for the event, the  
17 Debtors faced operating difficulties arising from delayed sponsor payments, political  
18 complications, costly litigation and the need to maintain their necessary permits in the face of  
19 continuing efforts by certain third parties to negatively affect the Debtors. The Debtors were  
20 forced to file for bankruptcy protection in order to obtain a breathing spell and hope to conduct  
21 either a sale of their business and/or assets, or internally restructure their financial affairs with an  
22 infusion of new equity. The Debtors have determined that an auction of their assets will motivate  
23 interested buyers to bid aggressively to allow the Debtors to obtain the highest and best value for  
24 such assets.

25 **C. The Debtors' Efforts To Market And Sell The Debtors' Assets.**

26 8. Since February 10, 2017, I have contacted marquee parties in the following five  
27 sectors: television network groups, media and internet companies, brand and product  
28 corporations, high net-worth individuals, and professional sports leagues and teams. In total, I

1 have reached out to hundreds of parties and have had direct communications with approximately  
2 seventy parties. I created a substantive data room from which prospectively interested buyers can  
3 obtain extensive financial data and other information about the Debtors' assets. I also assembled  
4 a substantial list of approximately 71 prospective buyers, and to date, approximately 11 buyers  
5 have signed confidentiality agreements and been provided with access to the data room. The  
6 opportunity to acquire the Debtors' assets was widely broadcast, and I therefore believe that the  
7 Debtors have reasonably provided notice to the most likely candidates who may be interested in  
8 acquiring the Debtors' assets by way of the auction sale process.

9 9. On May 3, 2017, the Debtors filed that certain *Debtors' Motion For Entry Of An*  
10 *Order: (1) Approving Auction Sale Format And Bidding Procedures; (2) Approving Form Of*  
11 *Notice To Be Provided To Prospective Buyers; (3) Approving Form Of Asset Purchase Agreement*  
12 *For Prospective Overbidders To Use; And (4) Scheduling A Hearing For The Court To Consider*  
13 *Approval Of The Debtors' Asset Sale To The Highest And Best Bidder* (the "Bid Procedures  
14 Motion"). On May 11, 2017, the Bankruptcy Court entered an order (the "Bid Procedures  
15 Order") [Doc No 86] granting the Bid Procedures Motion.

16 10. Pursuant to the Bid Procedures Order, an auction will be conducted on June 1,  
17 2017. As soon as possible after the auction, assuming a winning bidder emerges, the Debtors will  
18 file a supplement to this Motion setting for the identity of the winning bidder and the terms and  
19 conditions of the proposed sale to the winning bidder.

20 **D. The Court Should Authorize the Debtors to Sell their Assets to the Highest Bidder(s)**  
21 **at the Auction Sale.**

22 11. As indicated above, the Debtors have actively marketed their business and assets  
23 related to "Titans of Mavericks" for months, have reached out to key players in the action sports  
24 and entertainment industry, and have determined that the most likely manner of paying creditors  
25 in these cases is by monetizing the Debtors' assets for as high a price as possible. Absent a  
26 significant, timely monetizing event, recoveries to creditors and the timing of such recoveries are  
27 not certain in these cases. Thus, I respectfully submit that there is a sound business purpose for  
28 the Debtors to consummate a going concern sale of their business/assets to the highest bidder(s) at

1 the auction sale.

2 12. Following the Court's approval of the Bid Procedures Motion, the Debtors  
3 provided notice of the opportunity to participate in the auction sale to all of the known  
4 prospective bidders. Specifically, on May 15, 2017, I caused to be disseminated to approximately  
5 350 parties the notice of auction sale approved by the Bankruptcy Court.

6 13. I understand that the Debtors are also providing notice of the Motion on all of the  
7 Debtors' creditors, the UST, those parties who have requested special notice and all other parties  
8 to executory contracts and unexpired leases.

9 14. The sale process undertaken by the Debtors was specifically designed to insure  
10 that the highest price possible is obtained for the Debtors' business/assets. The Debtors engaged  
11 in an extensive and broad marketing and sale process for months, having facilitated due diligence  
12 with numerous parties. All interested and viable buyers were provided with equal access to the  
13 Debtors and their financial information. All prospective bidders have the equal opportunity to  
14 participate in the auction sale which is designed to achieve the highest and best price for the  
15 Debtors' business/assets, with no bidder having any advantage over any other. I therefore  
16 respectfully submit that the highest and best price obtained for the Debtors' business/assets at the  
17 auction sale represents the current fair market value of the Debtors' business/assets.

18 15. The Debtor's marketing and sale efforts have been structured in a manner to avoid  
19 any fraud, collusion or unfair advantages. No special treatment was provided to any bidder. The  
20 Debtors will be providing all qualified bidders with a draft of the template asset purchase  
21 agreement that the Debtors have prepared. Bidders are required to provide the Debtors with any  
22 proposed changes they have to the template asset purchase agreement prior to the auction sale.  
23 The Debtors expect to negotiate with the winning bidder(s) at or prior to the auction sale  
24 modifications to the asset purchase agreement in arm's length, good faith negotiations. Based on  
25 the foregoing, I respectfully submit that the Court should find that the winning bidder(s) at the  
26 auction sale are entitled to all of the protections afforded by Section 363(m) of the Bankruptcy  
27 Code.

**E. The Sale of the Debtors' Assets Should Be Free and Clear of Any and All Liens, Claims and Interests.**

16. There are no secured claims either scheduled by the Debtors or filed against the Debtors. That is, all of the claims asserted against the Debtors are unsecured claims. Attached hereto as Exhibit 1 and Exhibit 2, are lien searches conducted for CMI and Titans, respectively. The lien search reports indicate that there are no records of liens against the Debtors or the Debtors' assets.

17. If any party claims an alleged lien against or interest in the Debtors' assets related to "Titans of Mavericks", such liens and alleged interests are would be disputed by the Debtors and would be in bona fide dispute.

**F. The Court Should Authorize the Debtors to Assume and Assign to the Winning Bidder at the Auction Sale All Executory Contracts and Unexpired Leases that the Winning Bidder Wishes to Assume.**

18. Attached as Exhibit 3 to this Declaration is a list of what the Debtors believe constitutes all of their unexpired leases and contracts (without conceding that the contracts are executory contracts) (collectively, the "Contracts") along with what cure amounts (the "Cures"), if any, the Debtors believe will be required to be paid in order for the Contracts to be assumed by the Debtors and assigned to the winning bidder(s) (assuming that the Contracts are executory contracts capable of assumption or rejection). Pursuant to the Motion, the other parties to the Contracts ("Counterparty" in the singular and "Counterparties" in the plural) shall have up until May 24, 2017 to file a pleading with the Court opposing the assumption and assignment of the Contracts and indicating that they dispute the Debtors' designation of the amount of the Cures. If the Debtors and the Counterparties are not able to resolve their disagreement, the Court shall determine the amount of the Cures. If the Counterparties do not file a timely pleading disputing the Debtors' designation of the amount of the Cures, the amount of the Cures designated by the Debtors shall be deemed to constitute the amount of the Cures which must be paid in order for the Debtors to assume the Contracts and assign the Contracts to the winning bidder or the winning backup bidder. All prospective bidders will be required to designate which Contracts they desire

1 to assume (the “Designated Contracts”). The winning bidder and the winning back-up bidder will  
2 be required to pay the full amount of all Cures related to the Designated Contracts, in cash,  
3 without reduction of or setoff against the purchase price to be paid by such winning or back-up  
4 bidder, at the time of the sale closing as a condition to their ability to consummate their purchase  
5 of the purchased assets unless the Counterparties agree otherwise.

6 **G. The Court Should Authorize the Debtors to Reject All Executory Contracts and**  
7 **Unexpired Leases that the Winning Bidder does not Assume and that the Debtor**  
8 **Designates as a Rejected Contract.**

9 19. In connection with the Motion, the Debtors are requesting an order of the Court  
10 providing that all of the Contracts which are not Designated Contracts and which are identified by  
11 the Debtors after the sale auction as Contracts to be rejected (the “Rejected Contracts”) will be  
12 deemed rejected as of the closing of the Debtors’ sale, with the Debtors reserving the right to  
13 supplement the list of Rejected Contracts as the Debtors obtain additional information from the  
14 winning bidder and winning back-up bidder.

15 **E. The Debtors Request the Court to Waive the Fourteen-Day Waiting Periods Set**  
16 **Forth in Bankruptcy Rules 6004(h) and 6006(d).**

17 20. For all of the reasons set forth above, to make sure that the sale closing(s) occur  
18 timely and in order to ensure that the Debtors are able to preserve as much cash as possible, the  
19 Debtors believe that it is critically important that the Debtors and the winning bidder and winning  
20 back-up bidder be permitted to consummate their respective sale closing as soon after entry of the  
21 sale order as possible. In order to facilitate the most expeditious sale closing possible, the  
22 Debtors request that any order approving the Debtors’ sale of their business/assets and the  
23 Debtors’ assumption and assignment of the Designated Contracts be effective immediately upon  
24 entry of the sale order.

25 I declare under penalty of perjury that the foregoing is true and correct to the best of my  
26 knowledge. Executed this 17th day of May, 2017, at Santa Cruz, California.

27 /s/ Griffin Guess

28 GRIFFIN GUESS

condition to their ability to consummate their purchase of the purchased assets unless the Counterparties agree otherwise.

**G. The Court Should Authorize the Debtors to Reject All Executory Contracts and Unexpired Leases that the Winning Bidder does not Assume and that the Debtor Designates as a Rejected Contract.**

19. In connection with the Motion, the Debtors are requesting an order of the Court providing that all of the Contracts which are not Designated Contracts and which are identified by the Debtors after the sale auction as Contracts to be rejected (the “Rejected Contracts”) will be deemed rejected as of the closing of the Debtors’ sale, with the Debtors reserving the right to supplement the list of Rejected Contracts as the Debtors obtain additional information from the winning bidder and winning back-up bidder.

**E. The Debtors Request the Court to Waive the Fourteen-Day Waiting Periods Set Forth in Bankruptcy Rules 6004(h) and 6006(d).**

20. For all of the reasons set forth above, to make sure that the sale closing(s) occur timely and in order to ensure that the Debtors are able to preserve as much cash as possible, the Debtors believe that it is critically important that the Debtors and the winning bidder and winning back-up bidder be permitted to consummate their respective sale closing as soon after entry of the sale order as possible. In order to facilitate the most expeditious sale closing possible, the Debtors request that any order approving the Debtors’ sale of their business/assets and the Debtors’ assumption and assignment of the Designated Contracts be effective immediately upon entry of the sale order.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge. Executed this 17th day of May, 2017, at Santa Cruz, California.

DocuSigned by:



930F798B6BC0473...  
GRIFFIN GUESS

**EXHIBIT “1”**





2020 Hurley Way, Suite 350 Sacramento, CA 95825  
Local: (916) 564-7800 Fax: (916) 564-7900 Toll Free: (800) 952-5696

Ask us about UCC eZFILE®

## UCC Search Report

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<b>Type of Search</b>	UCCs, Federal Tax Liens, State Tax Liens, and Judgments
<b>Jurisdiction/Filing Office</b>	State of California, Secretary of State Uniform Commercial Code Division
<b>Indexed Through</b>	Jan. 19, 2017
<b>Subject Search Name</b>	CARTEL MANAGEMENT, INC.
<b>Search Key Entered</b>	CARTE* MANA*

## Results

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Based on a search of the indices of the Uniform Commercial Code Division of the Secretary of State of California, there are no active liens of record other than those set out below. Liens reflected in this report were based on the searcher's individual search parameters, the search key entered, as well as the searcher's choice of the liens ultimately included or excluded herein. Certification can only be obtained through the office of the California Secretary of State.

**Clear, no matches were found for the search key as detailed above.**

Similar name(s) found. Please refer to attached listing.

We assume no liability with respect to the identity of any party named or referred to in this report, nor with respect to the validity, legal effect or priority of any matter shown herein; nor, due to our inability to independently verify the accuracy of this data as provided by government and other sources, do we make any guaranty or representation as to its accuracy.

----- END OF REPORT -----

## Report Parameters

The UCC Revised Article 9 Model Administrative Rules (MARS) provide state filing offices with a set of guidelines for producing a legally compliant UCC lien search report. The search tool used to create this search report was designed to satisfy the requirements under MARS while providing the searcher with increased flexibility.

Flexible search logic generates a more inclusive search report and addresses the inconsistencies in searches performed within states that did not effectively adopt the MARS guidelines. Further, these specially designed broad-based searching features aid in the location of involuntary liens such as Federal and State Tax Liens and Judgment Liens and liens that may not be located in state databases limited to the MARS guidelines for the reporting of UCCs.



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Local: (916) 564-7800 Fax: (916) 564-7900 Toll Free: (800) 952-5696

Ask us about UCC eZFILE®

## California Similar Name Report

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**Subject Search Name** CARTEL MANAGEMENT, INC.  
**Truncated Search Name** CARTE\* MANA\*  
**Indexed Through** January 19, 2017  
Contains all debtor names not included on the final results report.

Filing #	Debtor Name	Address	City	State	Zip	Type
20117269199207	CARTER, LYMAN A	11164 BAKER ROAD	VICTORVILLE	CA	92392	JL
20067093945447	CARTER MANAGEMENT GROUP, INC.	2027 ELEVADO HILLS DRIVE	VISTA	CA	92084	UCC
20067093853677	CARTERA/TRILLIUM CONSTRUCTION MANAGERS	4609 E. FLOWER ST.	PHOENIX	AZ	85018	STL

**EXHIBIT “2”**



2020 Hurley Way, Suite 350 Sacramento, CA 95825  
Local: (916) 564-7800 Fax: (916) 564-7900 Toll Free: (800) 952-5696

Ask us about UCC eZFILE®

## UCC Search Report

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<b>Type of Search</b>	UCCs, Federal Tax Liens, State Tax Liens, and Judgments
<b>Jurisdiction/Filing Office</b>	State of California, Secretary of State Uniform Commercial Code Division
<b>Indexed Through</b>	Jan. 19, 2017
<b>Subject Search Name</b>	TITANS OF MAVERICKS, LLC
<b>Search Key Entered</b>	TITAN* MAVE*

## Results

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Based on a search of the indices of the Uniform Commercial Code Division of the Secretary of State of California, there are no active liens of record other than those set out below. Liens reflected in this report were based on the searcher's individual search parameters, the search key entered, as well as the searcher's choice of the liens ultimately included or excluded herein. Certification can only be obtained through the office of the California Secretary of State.

**Clear, no matches were found for the search key as detailed above.**

We assume no liability with respect to the identity of any party named or referred to in this report, nor with respect to the validity, legal effect or priority of any matter shown herein; nor, due to our inability to independently verify the accuracy of this data as provided by government and other sources, do we make any guaranty or representation as to its accuracy.

----- END OF REPORT -----

## Report Parameters

The UCC Revised Article 9 Model Administrative Rules (MARS) provide state filing offices with a set of guidelines for producing a legally compliant UCC lien search report. The search tool used to create this search report was designed to satisfy the requirements under MARS while providing the searcher with increased flexibility.

Flexible search logic generates a more inclusive search report and addresses the inconsistencies in searches performed within states that did not effectively adopt the MARS guidelines. Further, these specially designed broad-based searching features aid in the location of involuntary liens such as Federal and State Tax Liens and Judgment Liens and liens that may not be located in state databases limited to the MARS guidelines for the reporting of UCCs.

**EXHIBIT “3”**

**INTRODUCTORY NOTE: The contracts, agreements, licenses, and permits listed herein constitute all of the contracts, agreements, licenses, and permits currently known to the Debtors, based on the Debtors' review of their books and records. The Debtors' inclusion of a contract, agreement, license or permit herein shall not constitute an acknowledgment or admission that any of the listed contracts, agreements, licenses, or permits are executory in nature. The Debtors reserves the right to modify, amend and supplement this list.**

**CARTEL MANAGEMENT, INC.**

<b>Contracting Party</b>	<b>Description Of Contract</b>	<b>Cure Amount</b>
California Coastal Commission	Permit (Permit No. 2-15-1458-A1, and any other permits)	\$0.00
Coastside Properties Coastside Self-Storage	Month-to-Month Rental of Storage Unit	\$0.00
Cube Smart	Month-to-Month Rental of Storage Unit	\$0.00
Dept. of Homeland Security U.S. Coast Guard	Marine Event Permit (Permit Nos. 16703, 16671, and any other permits)	\$0.00
Fox Sports 1, LLC	Event Agreement, as Amended	\$280,000
Mavericks Invitational, Inc.	Intellectual Property License Agreement, as Amended	\$0.00
Red Bull Media House North America, Inc.	Webcast Rights Agreement, as Amended	\$0.00
San Mateo Harbor District	Special Use Permit (Permit No. 2016-01, and any other permits)	\$6,684.01
U.S. Dept. of Commerce Monterey Bay	National Marine Sanctuary Authorization Permit (Permit No. MBNMS-2015-034, and any other permits)	\$0.00

**TITANS OF MAVERICKS, LLC**

<b>Contracting Party</b>	<b>Description Of Contract</b>	<b>Cure Amount</b>
California State Lands Commission	License for the Use of the Pacific Ocean Offshore of Pillar Point	\$0.00
National Oceanic and Atmospheric Administration	Office of National Marine Sanctuaries Program Activities Permit (Permit No. MBNMS-2016-021 and any other permits)	\$0.00

San Mateo County Dept. of Public Works	Public Works Permit (Permit No. DPW2016-01493 and any other permits)	\$0.00
San Mateo County Parks	Special Events Permit (Permit No. 12072016-Mavericks and any other permits)	\$0.00
State of California Dept. of California Highway Patrol	Traffic Control Services Agreement (Contract No. R-16-330-0307, and any other contracts)	\$0.00
State of California Dept. of Transportation	Encroachment Permit (Permit No. 0416-6TK2639, and any other permits)	\$0.00
U.S. Dept. of Homeland Security - U.S. Coast Guard	Marine Event Permit (Permit No. SF-17-183, and any other permits)	\$0.00

## PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is: 10250 Constellation Boulevard, Suite 1700, Los Angeles, CA 90067

A true and correct copy of the foregoing document entitled **DEBTORS' MOTION FOR ENTRY OF AN ORDER: (1) APPROVING SALE OF SUBSTANTIALLY ALL OF THE DEBTORS' ASSETS RELATED TO "TITANS OF MAVERICKS" FREE AND CLEAR OF ALL LIENS, CLAIMS AND INTERESTS; (2) APPROVING DEBTORS' ASSUMPTION AND ASSIGNMENT OF UNEXPIRED LEASES AND EXECUTORY CONTRACTS AND DETERMINING CURE AMOUNTS; (3) APPROVING REJECTION OF UNEXPIRED LEASES AND EXECUTORY CONTRACTS WHICH ARE NOT ASSUMED; (4) WAIVING THE 14-DAY STAY PERIODS SET FORTH IN BANKRUPTCY RULES 6004(h) AND 6006(d); AND (5) GRANTING RELATED RELIEF; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF; DECLARATION OF GRIFFIN GUESS** will be served or was served **(a)** on the judge in chambers in the form and manner required by LBR 5005-2(d); and **(b)** in the manner stated below:

**1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF):** Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On **May 17, 2017**, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

- Lynn Brown notices@becket-lee.com
- Emily M Charley echarley@hansonbridgett.com, ihaas@hansonbridgett.com
- Stephen D Finestone sfinestone@fhllawllp.com
- Mary H Haas maryhaas@dwt.com, melissastrobels@dwt.com; laxdocket@dwt.com
- Jeffrey S Kwong jsk@lnbyb.com, jsk@ecf.inforuptcy.com
- Kenneth G Lau kenneth.g.lau@usdoj.gov
- Paul J Laurin plaurin@btlaw.com, slmoore@btlaw.com; jboustani@btlaw.com
- Krikor J Meshefejian kjm@lnbrb.com
- David L. Neale dln@lnbyb.com
- Adam M Satnick dmarioni@r2lawgroup.com
- Stewart K Schmella sschmella@lanzalawfirm.com, rbanda@lanzalawfirm.com
- United States Trustee (LA) ustpreion16.la.ecf@usdoj.gov
- Phillip K Wang phillip.wang@rimonlaw.com, david.kline@rimonlaw.com

**2. SERVED BY UNITED STATES MAIL:** On **May 17, 2017**, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

☒ Service information continued on attached page

**3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL** (state method for each person or entity served): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on **May 17, 2017**, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.



1 **Served via Attorney Service**

Hon. Deborah J. Saltzman  
2 United States Bankruptcy Court  
Edward R. Roybal Federal Building  
3 255 E. Temple Street, Suite 1334  
Los Angeles, CA 90012  
4

I declare under penalty of perjury under the laws of the United States of America that the foregoing is  
5 true and correct.

6	May 17, 2017	Stephanie Reichert	/s/ Stephanie Reichert
7	<i>Date</i>	<i>Type Name</i>	<i>Signature</i>

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Cartel Management, Inc.  
Titans of Mavericks, LLC  
Master Mailing List & RSN

Griffin Guess  
1223 Windward Lane  
Capitola, CA 95010-3936

United States Trustee  
Kenneth G Lau  
915 Wilshire Blvd, Suite 1850  
Los Angeles, CA 90017-3560

American Express Bank, FSB  
c/o Becket and Lee LLP  
PO Box 3001  
Malvern, PA 19355-0701

San Mateo County Harbor District  
504 Avenue Alhambra  
El Granada, CA 94018

Ahn Group  
4372 Neosho Avenue  
Los Angeles, CA 90066-6132

Body Glove International, LLC  
Attn: Yuval Rogson, The Rogson Firm  
1875 Century Park East, Ste. 1490  
Los Angeles, CA 90067

Red Bull Media House North America  
1740 Stewart Street  
Santa Monica, CA 90404

American Express  
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El Paso, TX 79998-1340

Beach Byte Processamento de Dados  
Ltda.  
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1001B - Niterói - RJ  
BRAZIL

California State Lands Commission  
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Sacramento, CA 95825-8219

Cubed Service  
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Reno, NV 89502-7526

Eric Weisman  
33 W 60th Street Floor 4  
New York, NY 10023-7905

FOX Sports Network, LLC  
10201 W. Pico Blvd Building 103  
Los Angeles, CA 90064-2606

Fox Sports  
10201 W. Pico Blvd. Bldg 103  
Los Angeles, CA 90064-2606

Hartnett Smith & Paetkau  
777 Marshall Street  
Redwood City, CA 94063-1800

Internal Revenue Service  
PO Box 7346  
Philadelphia, PA 19101-7346

Khoury Bookkeeping & Tax  
520 N. Brookhurst St. Suite 200  
Anaheim, CA 92801-5236

Law Offices of Yuval Rogson  
1875 Century Park East Suite 1490  
Los Angeles, CA 90067-2515

Maverick Invitation, Inc.  
25 Johnson Pier  
Half Moon Bay, CA 94019-4069

Potato Press |1/20 George St  
Southport, QLD 4215  
AUSTRALIA

Red Bull Media House North America  
c/o Mary H. Haas  
DAVIS WRIGHT TREMAINE LLP  
865 S. Figueroa Street, Suite 2400  
Los Angeles, CA 90017-2566

SMHD  
400 Oyster Point Blvd, #300  
South San Francisco, CA 94080-1919

Segler Holdings, LLC.  
c/o LLF 4950 Bissonet Street  
Long Branch, NJ 07740-1000

Tiedt Hurd  
980 Montecito Drive, Suite 209  
Corona, CA 92879-1793

Transition Productions  
1046 Princeton, Suite 100  
Marina Del Rey, CA 90292-5464

U.S. Security & Exchange Commission  
Attn: Bankruptcy Counsel  
444 South Flower Street, Suite 900  
Los Angeles, CA 90071-2934

Vogner Design  
2233 Barry Avenue  
Los Angeles, CA 90064-1401

California Coastal Commission  
North Central Coast District  
45 Freemont St., Suite 2000  
San Francisco, CA 94105-2221

Cattos  
111 Dubois Street  
Santa Cruz, CA 95060-2108

Impact Lighting  
70 West Ohio Ave, Suite E  
Richmond, CA 94804-2033

Los Angeles County Treasurer And Tax  
Collector  
Po Box 54110  
Los Angeles, CA 90054-0110

NOAA  
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San Francisco, CA 94129-5265

Nikki Brooks  
3736 Hilltop Ct.  
Soquel, CA 95073-2307

Pacific RV & Boat Storage  
PO Box 3637  
Santa Cruz, CA 95063-3637

San Mateo County Parks Permit  
Department of Parks  
County of San Mateo  
455 County Center, 4th Floor  
Redwood City, CA 94063-1663

San Mateo Harbor District  
400 Oyster Point Blvd #300  
South San Francisco, CA 94080-1919

Savannah Shaughnessy  
142 Zinfandel Cr  
Scotts Valley, CA 95066-3256

Wells Fargo Credit Card Services  
P.O. Box 51193  
Los Angeles, CA 90051-5493

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Rimon P.C.  
One Embarcadero Center, Ste 400  
San Francisco, CA 94111

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McCormick, Lanza & McNeel, LLP  
4950 Bissonnet  
Bellaire, Texas 77401

Counsel for San Mateo County Harbor  
District  
Hanson Bridgett LLP  
Emily M. Charley  
425 Market Street, 26<sup>th</sup> Floor  
San Francisco, CA 94105

Body Glove International, LLC  
504 N Broadway  
Redondo Beach, CA 90277

State Board of Equalization  
PO Box 942879  
Sacramento CA 94279-0055

Cartel Management & Titans of Mavericks  
Consolidated Schedule G

California Coastal Commission  
45 Fremont Street  
#2000  
San Francisco, CA 94105

Coastside Properties  
Coastside Self-Storage  
110 Stanford Ave.  
Half Moon Bay, CA 94019

Cube Smart  
198 W Artesia Blvd.  
Long Beach, CA 90805

Dept. of Homeland Security  
U.S Coast Guard  
1900 Half Street S.W. 10-1637  
Washington, DC 20593

Fox Sports 1, LLC  
10201 W. Pico Blvd. Bldg 103  
Los Angeles, CA 90064

Mavericks Invitational, Inc.  
25 Johnson Pier  
Half Moon Bay, CA 94019

Red Bull Media House North America,  
Inc.  
1740 Stewart Street  
Santa Monica, CA 90404

San Mateo Harbor District  
400 Oyster Point Blvd, #300  
South San Francisco, CA 94080

U.S. Dept. of Commerce  
Monterey Bay  
99 Pacific Street, Building 455A  
Monterey, CA 93940

California State Lands Commission  
100 Howe Avenue  
Suite 100  
Sacramento, CA 95825

National Oceanic and Atmospheric  
Administration  
1305 East-West Highway, 11th Floor  
Silver Spring, MD 20910

San Mateo County  
Dept. of Public Works  
555 County Center, 5th Floor  
Redwood City, CA 94063

San Mateo County Parks  
455 County Center, 4th Floor  
Redwood City, CA 94063

State of California  
Dept. of California Highway Patrol  
355 Convention Way  
Redwood City, CA 94063

State of California  
Dept. of Transportation  
1120 N Street  
Sacramento, CA 95814

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U.S. Coast Guard  
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San Francisco, CA 94130

Coastside Properties, LLC  
P.O. Box 371357  
Montara, CA 94037

Coastside Properties, LLC  
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Half Moon Bay, CA 94019

California State Lands Commission  
Attn: Brian Bugsch  
100 Howe Avenue, Suite 100-South  
Sacramento, CA 95825-8202

San Mateo County Harbor District  
504 Avenue Alhambra  
El Granada, CA 94018